



Our public defense system is failing!

The U.S. Constitution says you have the right to an attorney if you are accused of a crime, even if you cannot afford one. Effective defense representation is fundamental to a working justice system. But in Michigan, the system of public defense is failing. It fails the taxpayers who fund it, fails the families who rely on it to keep them safe, and fails to adequately uphold the constitutional rights of the accused.

Michigan's current public defense system fails taxpayers:

- Our failing public defense system is inefficient and wasteful.
 - Costly errors and inappropriate sentences mean that Michigan taxpayers pay millions of dollars in wrongful conviction settlements and unnecessary corrections costs.
 - Michigan has shifted its constitutional obligation onto the counties. The 83 counties – and their courts – all fund and administer public defense differently. This is an inefficient use of taxpayer dollars.
 - Many counties are responding to fiscal pressures by cutting public defense spending. This leads to even more errors and jeopardizes public safety.

In Michigan, taxpayer dollars are wasted on an inefficient public defense system that does not deliver the public safety or fairness taxpayers should expect.

Michigan's public defense system fails to protect public safety:

- Wrongful convictions mean that the innocent go to prison while perpetrators of brutal crimes are free. When mistakes are made, public safety is at risk.
- Walter Swift, Ken Wyniemko, and Eddie Joe Lloyd are just three Michigan residents who were convicted of crimes they did not commit. While they languished for years in prison, the real perpetrators remained free to strike again.
- Michigan needs a public defense system that ensures that the right people are sentenced for the appropriate amount of time.

As a result of the failing public defense system in Michigan, we cannot be certain the guilty are going to jail and the innocent are free.

Michigan Campaign for Justice

A JUSTICE SYSTEM THAT WORKS FOR ALL



Our public defense system is failing!

Michigan's failing public defense system fails the accused:

- The U.S. Constitution guarantees the accused the effective assistance of an attorney. But in Michigan, this right is being denied.
- The National Legal Aid and Defender Association study of Michigan's trial-level public defense system (June 2008) found that our state fails to uphold the constitutional right to counsel. The system is inadequately funded and fails to meet nationally recognized standards.
- Michigan has no standards for trial-level public defense services.
 - There is little to no funding for experts or investigators.
 - Individuals often meet their attorneys for just a few minutes before trials.
 - Many attorneys have such unmanageable caseloads that they cannot provide an effective defense.
 - There is no statewide system to train attorneys and ensure they are qualified to handle their cases.

The constitutional rights of all Michiganders, regardless of how much money they have, should be upheld. No exceptions.

Now is the time to fix Michigan's failing public defense system.

Experts have pointed out for decades that Michigan's system of public defense is broken. Now, we have the information, tools, and team to bring about change.

- *We have the research* –the National Legal Aid and Defender Association's evaluation of Michigan's trial-level system, released in June 2008, provides valuable long-needed objective information that supports what many knew anecdotally.
- *We have the tools* – the Campaign for Justice is currently funded by a generous grant from the Atlantic Philanthropies.
- *We have the team* – the coalition has supporters from organizations and leaders across the political spectrum, all fighting for change. The Campaign partners with the State Bar of Michigan, a leader of the reform effort with a long history of commitment to this issue.

Michigan's people deserve a justice system that works for all.

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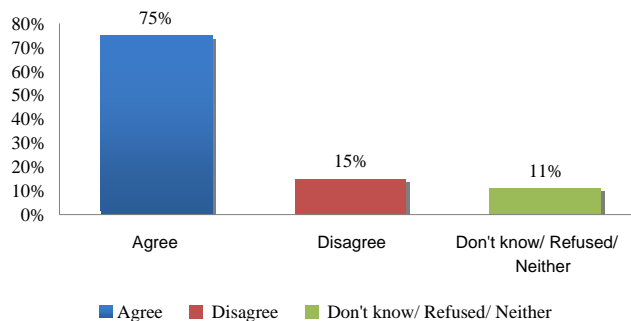
A Constitutional crisis

*“In all criminal prosecutions, the accused shall enjoy the right...
to have the Assistance of Counsel for his defense.”*

- U. S. Constitution, Amendment VI

The U.S. Constitution guarantees the accused the effective assistance of an attorney. Over 40 years ago, in the landmark case *Gideon v. Wainwright*, the United States Supreme Court ruled that “the assistance of counsel is a fundamental right essential to a fair trial.” But in Michigan, this right is being denied.

The amount of money you have should not determine whether you get an adequate defense representation. However, in Michigan, voters overwhelmingly believe that a rich person gets better treatment than a poor person.¹



The Constitutional rights of all Michigan residents must be protected.

The state has the responsibility to promptly provide qualified counsel to anyone accused of a crime who cannot afford an attorney. No exceptions. Michigan’s public defense system has been singled out as one of the worst in the nation for failing to meet national standards.²

Michigan has no standards for trial-level public defense services.

- There is little to no funding for experts or investigators.
- Individuals often meet their attorneys for just a few minutes before trials.
- Many attorneys have such unmanageable caseloads that they cannot provide an effective defense.
- Many lack training or experience for the cases they handle.

To address this Constitutional crisis, Michigan needs to restore the right of all people accused of crimes to receive effective defense representation.

¹ Marketing Resource Group, September 12-19, 2007, 600 respondents.

² American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants. *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice: A Report on the American Bar Association’s Hearing on the Right to Counsel in Criminal Proceedings* (December 2004).

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Our communities at risk

"Our state's broken public defense system puts all of our residents at risk. When the defense is unable to function, a fair trial is impossible. Innocent people... go to jail and real perpetrators remain free on the streets."

- Saul A. Green, former United States Attorney, Eastern District of Michigan

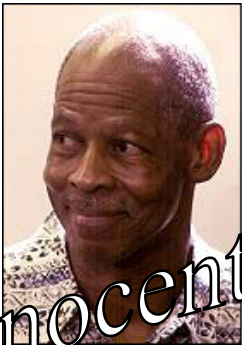
A broken public defense system fails to keep our communities safe.

- Wrongful convictions mean that the innocent go to prison while perpetrators of brutal crimes are free. When mistakes are made, we are all at risk.

Ken Wyniemko and Eddie Joe Lloyd went to jail for crimes they did not commit. Years after Wyniemko and Lloyd were exonerated, the brutal crimes remain unsolved.



Ken Wyniemko faced a rape conviction and a lengthy prison sentence. He was certain his attorney would challenge the evidence in court. But that didn't happen. His public defense attorney did not answer numerous phone calls, and then quit. The new attorney had only two weekend days to prepare. Biological evidence that would have proven his innocence was never analyzed. After more than eight years in prison, DNA testing proved him innocent.



Eddie Joe Lloyd was convicted of rape and murder after falsely confessing to the crimes. His first appointed lawyer quit on the day of his trial. His second lawyer failed to argue key issues. There was no challenge to the police interrogation procedures, nor any analysis of the blood, hair or fingernail scrapings from the crime scene. No psychiatric expert was asked to evaluate the reliability of his confession, even though he was institutionalized for mental illness at the time of his interrogation. Little cross-examination took place during trial, and no defense witnesses were called. In 2002, 17 years later, DNA evidence proved his innocence.

- Michigan needs a public defense system that ensures that the right people are sentenced for the appropriate amount of time.

A strong public defense system is needed in order to convict the guilty, protect the innocent, and keep our communities safe.

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Failing the taxpayers

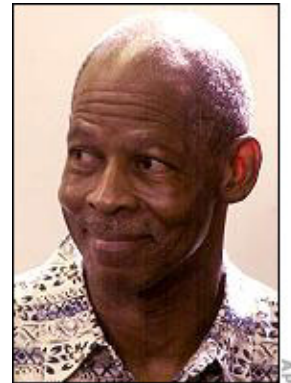


Michigan's failing public defense system fails the taxpayers; it is inefficient and wasteful.

- Costly errors and, often, inappropriate sentences mean that Michigan taxpayers pay millions in wrongful conviction lawsuits and corrections costs.

Convicting the wrong man is a costly proposition – for everyone.

- Eddie Joe Lloyd suffered terrible injustices – a wrongful conviction and 17 long years in prison for a crime he did not commit. After his exoneration in 2002, Lloyd sued the State of Michigan and Wayne County for the failure to provide him with adequate representation.
- The suit was settled for approximately \$4 million, in addition to the hundreds of thousands of dollars spent over 17 years to incarcerate Lloyd. These figures don't even include the amount the state spent prosecuting the case and defending the appeal, and the cost of the habeas and civil lawsuits.



An inefficient system is an expensive system.

- The State has shifted the cost of public defense onto its 83 counties. That means Michigan's 83 counties have 83 different public defense systems with separate budget processes – which lead to 83 different levels of funding.
- In an effort to save money in the short term, many counties are cutting public defense spending at the risk of jeopardizing public safety and making mistakes that cost more money over the long term.

Taxpayers are pouring millions into an inefficient justice system that does not deliver the public safety or fairness taxpayers should expect.

Michigan needs a system of public defense that effectively and efficiently uses taxpayer dollars.

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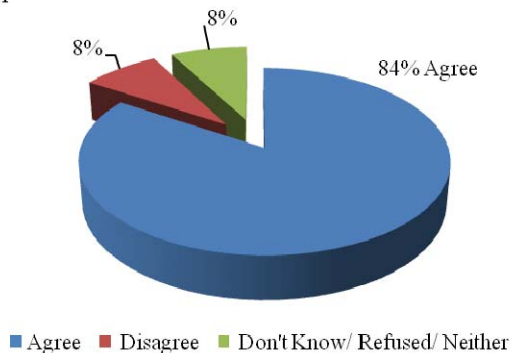
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Michigan supports a justice system that works

Michigan citizens expect a fair and effective criminal justice system.

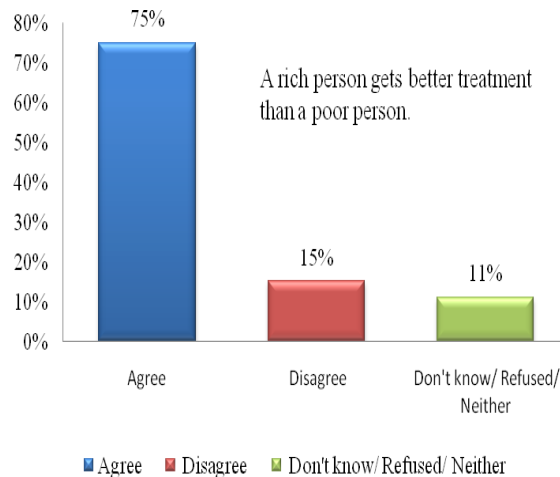
The state should provide people with competent legal representation



84 percent of Michigan citizens agree that the State should provide people with competent legal representation.

But they are losing faith in the system.

Three quarters of Michigan citizens agree that a rich person gets better treatment in Michigan's criminal justice system than a poor person.



Only 14 percent of Michigan citizens have a great deal of confidence that the Michigan criminal justice system is ensuring that the guilty are convicted and the innocent are set free.

Marketing Resource Group, September 12-19, 2007, 600 respondents.

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Children lost in the system

"Under our Constitution, the condition of being a boy does not justify a kangaroo court."
-In re Gault, 387 U.S. 1 (1967)

Children accused of delinquent acts have a Constitutional right to be represented by an attorney in the proceedings against them. But nearly all accused Michigan children either are denied counsel, waive counsel without understanding the potentially catastrophic consequences, or are represented by attorneys who lack the resources and training to provide effective representation.

Federal studies estimate that 50 to 75 percent of incarcerated children have diagnosable mental health disorders and nearly half have substance abuse problems. Many of these children might have avoided the justice system altogether if the defense attorney had the time and resources to explore options for treatment, counseling and other support services proven to be far more effective than incarceration at stopping the cycle of crime.

Ineffective defense can be devastating for families and children. Families are broken apart and long-term outcomes are worse for incarcerated children.



"Juvenile justice representation is considered in many ways as an afterthought all across the state of Michigan. As inadequate as adult representation is, the treatment of kids in delinquency proceedings is far worse."

-David Carroll, National Legal Aid & Defender Association,
"A Race to the Bottom: Speed & Savings over Due Process – A Constitutional Crisis"

Michigan's public defense system fails our children.

- Children are frequently advised to waive counsel, without adequate information about the potential for severe consequences.
- Public defense attorneys in Michigan have caseloads that far exceed national standards – making it virtually impossible to effectively represent their young clients.
- Children are often advised to plead guilty before their attorney has conducted a factual investigation of the case.
- In some counties, different attorneys often represent a child at each stage of the proceedings. That means critical information, along with the trust of a child in his or her attorney, can be lost in the process. The attorney is then ill-equipped to pursue solutions that address underlying problems.
- Many attorneys lack training or experience specific to juvenile delinquency, because there are no statewide training requirements and there is little training available for attorneys representing juveniles in delinquency proceedings.
- There is little to no funding for investigators, experts, or specialists in adolescent development, who are critical to building arguments that could make a decisive difference.

Michigan's children deserve a justice system that works for all.

A public defense system that has adequate state funding and meets national standards would train and equip defense attorneys to address the needs of Michigan's most vulnerable and marginalized children.

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The role of public defense attorneys in meeting client needs

When there is a defender office, one function of the office will be to explore and advocate for programs that improve the system and reduce recidivism.

– The Eleven Principles of a Public Defense Delivery System

A public defense attorney is the first point of contact with an individual in the criminal justice system.

- In Michigan, the prevalence of mental illness is 51%, yet only 7% of Michigan's 51,000 incarcerated individuals are receiving mental health services.ⁱ
- More than half of all individuals incarcerated in Michigan prisons indicate that they have substance abuse problems.ⁱⁱ

Trained public defense attorneys can help their clients access cost-effective services that will help reduce recidivism and improve public safety.

The revolving door of incarceration wastes taxpayer dollars!

- 75% of individuals with mental illness have been previously incarceratedⁱⁱⁱ - a practice that often exacerbates mental health conditions and *increases* the likelihood of re-offending.
- Studies in Michigan reveal a cost savings of nearly \$1 million in Kalamazoo and Barry counties in just 24 months by implementing drug courts.^{iv}

Michigan's broken public defense system prevents public defense attorneys from effectively defending their clients—which includes ensuring they have access to treatment and services.

- Excessive caseloads overwhelm defense attorneys to the point where they have little time to investigate the circumstances and life situations of their clients;
- Public defense attorneys lack resources to work with service or treatment providers, use experts or identify appropriate referral recommendations to judges;
- There is little, if any, training available to public defense attorneys about the impact of mental health, substance abuse or other issues affecting those in the criminal justice system.

Michigan's people deserve a justice system that works for all.

ⁱ Milne, D. "Michigan bill would establish mental health courts." American Psychiatric Foundation (2007). Michigan Department of Corrections.

ⁱⁱ Michigan Prisoner Re-entry Initiative brochure.

ⁱⁱⁱ Reistein, Mark. "Mental health courts needed." Detroit News Opinion, March 19, 2008.

^{iv} Finigan, Carey (2006). "Michigan Adult Drug Treatment Court Outcome and Cost Evaluation" Website: http://www.npcresearch.com/projects_0039.php. Accessed May 12, 2008.

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THE COLOR OF INJUSTICE:

Our failing public defense system

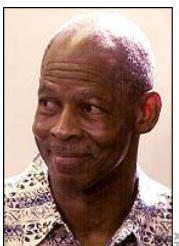
The U.S. Constitution says you have the right to an attorney if you are accused of a crime, even if you cannot afford one. Effective defense representation is fundamental to a working justice system. But in Michigan, this right is being denied. Every day, our most vulnerable citizens are put on a fast-moving assembly line to jail and prison.

Low-income people of color are disproportionately among those who most need to access public defense.

| | African American | Latino/ Hispanic | White |
|---|------------------|------------------|-------|
| Percentage of Michigan population ¹ | 14.3% | 3.9% | 81.2% |
| Percent below poverty level ² | 29.9% | 23.2% | 10.3% |
| Michigan prison and jail incarceration rate (per 100,000 population) ³ | 2,262 | 397 | 412 |

Public defense reform is an urgent issue for people of color.

- A U.S. Department of Justice survey showed that, nationally, 77 percent of African Americans and 73 percent of Latinos in state prisons were represented by public defense attorneys.⁴
- One in nine black men between the ages of 20 and 34 is behind bars.⁵
- Latinos/Hispanics have a one in six chance of being confined in prison during their lifetimes.⁶
- Incarceration breaks families. In 1999, nine times as many African American children than white children had a parent in prison.⁷



Eddie Joe Lloyd was convicted of rape and murder after falsely confessing to the crimes. His first appointed lawyer quit on the day of his trial. His second lawyer failed to argue key issues. There was no challenge to the police interrogation procedures, nor any analysis of the blood, hair or fingernail scrapings from the crime scene. No psychiatric expert was asked to evaluate the reliability of his confession, even though he was institutionalized for mental illness at the time of his interrogation. Little cross-examination took place during trial, and no defense witnesses were called. In 2002, 17 years later, DNA evidence proved his innocence.

The Campaign is fighting for a justice system that works for all. Join us and stand up for justice!

¹ U.S. Census Bureau, 2006 American Community Survey.

² U.S. Census Bureau, Census, "Poverty Status in the Past 12 Months," 2006 American Community Survey.

³ Based on data from the Bureau of Justice Statistics, Prison and Jail Inmates at Midyear 2005. From the Sentencing Project, *Uneven Justice: State Rates of Incarceration By Race and Ethnicity* (July 2007).

⁴ Gohara, M.S., Hardy, J.S., Hewitt, D.T., "The disparate impact of an under-funded patchwork indigent defense system on Mississippi's African Americans: The civil rights case for establishing a statewide, fully funded public defender system." *Howard Law Journal*, 49 (1) (Fall 2005).

⁵ Pew Center on the States, "One in 100: Behind Bars in America 2008."

⁶ Walker, N., Senger, J.M., Villarruel, F., Arboleda, A., National Council of La Raza, *Lost Opportunities: The Reality of Latinos in the U.S. Criminal Justice System*. (October 2004).

⁷ Gohara, M.S., Hardy, J.S., Hewitt, D.T., "The disparate impact of an under-funded patchwork indigent defense system on Mississippi's African Americans: The civil rights case for establishing a statewide, fully funded public defender system." *Howard Law Journal*, 49 (1) (Fall 2005).

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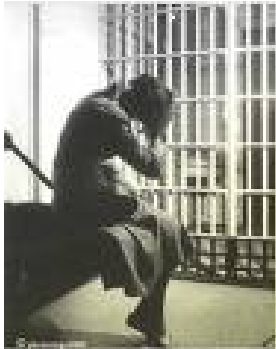
The gender gap in public defense

“Gender matters in the forces that propel women into criminal behavior. For this reason, gender must be taken into account in crafting effective responses to their problems.”ⁱ

- Charon Schwartz

Women, Poverty and Criminal Justice

Women and girls are the most rapidly growing population in the criminal justice system.ⁱⁱ



- Women are more likely to live in poverty and more likely to need the service of a public defense attorney if faced with a criminal charge.
- 24.8 percent of households headed by single women were poor, while 13.5 percent of households headed by single men and 5.5 percent of married couple households live in poverty.
- Black and Hispanic female-headed households had poverty rates just under 40 percent.ⁱⁱⁱ

Families Torn Apart

More than two-thirds of women in prison have children under the age of eighteen, and among them, 75 percent are the sole custodial parent, versus ten percent for men.^{iv} When breadwinners are in prison, children are often thrown into the state’s foster care system.

Public defense reform: an urgent issue for women

Women and girls cannot receive an adequate defense if their public defense attorney is not knowledgeable in the emerging research and case law related to women’s issues like victimization, mental health, domestic violence, and self-defense theories.

- Women and girls in the criminal justice system have disproportionately suffered from physical and sexual abuse, domestic violence, chemical dependency, and mental illness.
- Mandatory domestic violence arrests policies sweep large numbers of women into the criminal justice system.

The Campaign for Justice is fighting for a justice system that works for all. Join us and stand up for justice!

ⁱ Schwartz, C., “Rehabilitation vs. Incarceration: Non-Violent Women Drug Offenders,” *PrisonerLife.com* (November 2001).

ⁱⁱ “Research on Women and Girls in the Criminal Justice System: Plenary on the Papers of the 1999 Conference on Criminal Justice Research and Evaluation. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ⁱⁱⁱ “Poverty in the United States; Frequently Asked Questions.” National Poverty Center, University of Michigan, Gerald R. Ford School of Public Policy.

^{iv} No Where to Hide: Retaliation against women in Michigan state prisons. Human Rights Watch. Website: http://www.hrw.org/reports98/women/Mich.htm#P56_6564. Accessed March 25, 2008.

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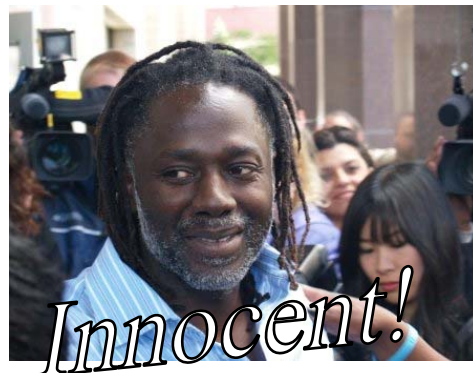
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Failed justice: WALTER SWIFT

Walter Swift:

- Wrongfully convicted of the 1982 rape and robbery of a Detroit woman.
- Sentenced to 20-40 years.
- Spent almost twenty-six years in prison for a crime he did not commit.
- A son, a father, a brother, and friend of many.
- Exonerated on May 21, 2008.



Mr. Swift's attorney

Lawrence Greene served as Mr. Swift's trial attorney in 1982. Mr. Greene was reprimanded numerous times for misconduct and failure to provide effective representation, and his license to practice law in Michigan was revoked three times – after he represented Mr. Swift.

A working public defense system would monitor attorney performance and ensure that cases are assigned to qualified attorneys.

The flawed eyewitness identification

"Not a strong I.D." – those were the notes that the Detroit police officer in charge of the investigation wrote after the victim falsely identified Mr. Swift as her attacker. Mr. Swift did not at all resemble the description that the victim gave of her attacker's facial hair, age, hair style, and more. Mr. Swift was chosen out of a series of photographs but was not positively identified by the victim until being placed in a live line up. That line up did *not* include the other seven men whose pictures she selected. Instead, it included men who were much shorter, much taller, much older, etc.

The trial (1982)

Mr. Swift's attorney failed to question the Detroit police officer about the faulty eyewitness identification procedures. The officer later noted the weakness of the attorney's line of questioning in an affidavit.

The attorney was aware of physical evidence that suggested the semen at the crime scene was not Mr. Swift's. However, the attorney failed to cross examine one of the lab technicians and waived testimony from the other technician that would have helped to prove Mr. Swift's innocence.

Mr. Swift's exoneration (2008)

Walter Swift's conviction was vacated on May 21, 2008. The Wayne County Prosecutor joined the Innocence Project in its motion to set aside the conviction.

"I'm angry that this is supposed to be a justice system, and it's nothing even close to a justice system."
- Audrey Kelly Mills, Mr. Swift's daughter

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Failed justice: KEN WYNIEMKO

Ken Wynnemko:

- A son, a father, and a friend to many.
- Wrongfully convicted of the 1994 rape of a Clinton Township woman.
- Sentenced to 40-60 years.
- Spent over eight years in prison for a crime he did not commit.
- Exonerated on June 17, 2003.



The composite sketch

The victim told investigators that she saw a few glimpses of the attacker before she was blindfolded. She described him as a white male between 6' and 6'2" tall, weighing about 200-225 pounds, about 20-25 years old. Later she described the composite sketch created by the police as only about 60 percent accurate. Mr. Wynnemko was 5'11", weighed 198 pounds, and was 43 years old.

The trial (1994)

Mr. Wynnemko was certain his attorney would challenge the evidence in court. But that didn't happen. His public defense attorney did not answer numerous phone calls, and then quit. The judge appointed a new attorney that Friday, and set the following Monday as the date for jury selection. That gave the new attorney just *two* days to examine the facts of the case. In addition:

- Biological evidence that would have proven his innocence was never analyzed.
- The attorney did not challenge the police informant's testimony that was evidence.
- The attorney did not adequately question the reliability of the composite sketch used as evidence against Mr. Wynnemko.

Mr. Wynnemko's exoneration (2003)

- DNA testing in June 2003 did not match Mr. Wynnemko's DNA.
- His conviction was overturned on June 17, 2003.
- Mr. Wynnemko recalls that there was not a single cloud in a sky that day.
- The person who likely committed the crime has recently been identified through a DNA match - more than thirteen years after the crime was committed.

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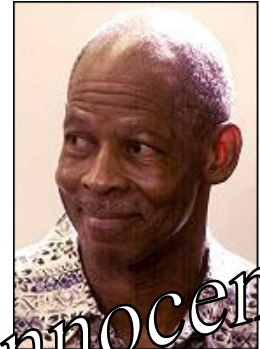
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Failed justice: EDDIE JOE LLOYD

Eddie Joe Lloyd:

- Mentally ill and institutionalized when charged with the crime.
- Wrongfully convicted of the 1984 brutal rape and murder of a sixteen year-old girl.
- Sentenced to life without parole.
- Spent more than 17 years in prison for a crime he did not commit.
- Exonerated on August 26, 2002.
- Died September 22, 2004, because of medical complications arising during his incarceration.



Innocent!

Mr. Lloyd's mental condition

While committed to the Detroit Psychiatric Institute, Mr. Lloyd sent letters to the police with suggestions about how to solve the murder case. He had been diagnosed by the psychiatrist as suffering from bipolar affective disorder and exhibited symptoms such as grandiosity, flight of ideas, and "a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life."

Mr. Lloyd falsely confessed to committing the crimes.

The trial (1985)

His first appointed lawyer quit on the day of his trial because he was ill. His second lawyer failed to argue key issues.

- There was no challenge to the police interrogation that took place while Eddie was in a mental institution.
- No psychiatric expert was asked to evaluate the reliability of his confession, even though he was in a mental institution at the time he was interviewed.
- There was no call for forensic analysis of the blood, hair or fingernail scrapings from the crime scene.
- Little cross-examination took place during trial, *and no defense witnesses* were called.
- The first lawyer received a flat \$150 for all investigative activities, regardless of what could actually be accomplished for that amount.
- The investigator, a law student with a prior criminal record, never met with Mr. Lloyd or conducted a meaningful investigation.

Mr. Lloyd's exoneration

Mr. Lloyd contacted the Innocence Project and after years of searching for the biological evidence in his case, two crime labs performed DNA testing, both finding that the DNA evidence excluded Mr. Lloyd as a suspect. In August 26, 2002, he was exonerated. *The real perpetrator in this case has not yet been found.*

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TAKE ACTION!

The Campaign for Justice is a broad-based group of organizations and individuals from across the political spectrum fighting for a fair and effective public defense system in Michigan. We believe that legislative reform is needed to improve cost effectiveness, protect the public's safety and restore the Constitutional right to an effective defense representation.

Together, we will:

- Build a network of organizations and individuals that share the vision of a justice system that works for all;
- Educate policymakers and the public about the need for reform; and
- Win passage of legislation that fixes Michigan's public defense system.



Now is the time for reform:

Experts have pointed out for decades that Michigan's system of public defense is broken. Now, we have the information, tools, and team to bring about change.

- *We have the research* –the National Legal Aid and Defender Association's evaluation of Michigan's trial-level system, released in June 2008, provides valuable long-needed objective information that supports what many knew anecdotally.
- *We have the tools* – the Campaign for Justice is currently funded by a generous grant from the Atlantic Philanthropies.
- *We have the team* – the coalition has supporters from organizations and leaders across the political spectrum, all fighting for change. The Campaign partners with the State Bar of Michigan, a leader of the reform effort with a long history of commitment to this issue.

Now is the time to fix Michigan's failing public defense system. Join us and stand up for justice!

- ☒ Learn more about Michigan's failing public defense system by calling, writing or emailing us!
- ☒ Sign up for updates on the Campaign for Justice website: www.michigancampaignforjustice.org.
- ☒ Share your stories and perspectives about the system in your area, by emailing or calling us.
- ☒ Invite Campaign staff or volunteers to speak at your next professional, civic, community, religious, or civil rights organization meeting!
- ☒ Sign up with the Campaign to submit letters to the editor of your local newspaper.

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